

18. (Amended) The fountain of claim 16 wherein the water discharge device is a fountain head.

19. (Amended) The fountain of claim 16 wherein the water discharge device is a sprinkler head.

20. (Amended) The fountain of claim 16 wherein the water discharge device comprises a post member connected to the pump and a fountain head, the post member for providing water from the pump to the fountain head.

### REMARKS

The Examiner has rejected claims 1-4, 6-8, 10, 12-14, 16 and 22 under 35 U.S.C. § 102(d) as being barred by Japanese Patent Application No. JP02000014581A to Konishi *et al.* ("Konishi"), claim 9 under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,966,868 to Cox ("Cox"), claims 5 and 11 under 35 U.S.C. § 103(a) as obvious over Konishi, and claims 15 and 17-21 as obvious over Konishi in view of U.S. Patent No. 6,092,333 to Steffan ("Steffan"). The Examiner has also made rejections of claims 4, 15 and 21 under 35 U.S.C. § 112, ¶ 1. Finally, the Examiner has made objections to the drawings and the claims. By this amendment, Applicant amends claims 1 and 9-20 and cancels claims 4 and 21. As a result, claims 1-3, 5-20 and 22 are currently at issue in the application.

#### I. Rejections Under 35 U.S.C. § 102(d)

The Examiner has rejected claims 1-4, 6-8, 10, 12-14, 16 and 22 under 35 U.S.C. § 102(d) as being barred by Konishi. Konishi is a Japanese published patent application. 35 U.S.C. § 102(d) recites, in relevant part:

A person shall be entitled to a patent unless-

(d) the invention was first ... caused to be patented ... **by the applicant or his legal representatives or assigns** in a foreign country prior to the date of the application for patent in this country on an

application for patent or inventor's certificate filed more than twelve months before the filing of the application in the United States

Therefore, for a U.S. patent application to be barred under 35 U.S.C. § 102(d) the prior foreign application must have been filed "by the application or his legal representatives or assigns."

On their face, Konishi and the present application share no common applicants, legal representatives or assigns. As a result, the present claims are not barred by Konishi under § 102(d).

Moreover, Konishi does not disclose the same invention as the present invention. As amended, claim 1 requires "a second planter positioned on and suspended from an exterior surface of the planter." Konishi does not show "a second planter positioned on and suspended from an exterior surface of the planter." Therefore, claim 1 does not claim the same invention as disclosed in Konishi. Claims 2, 3 and 6-8 depend from claim 1 and include the limitations of claim 1 and therefore are patentable over Konishi for at least the same reasons as claim 1. Claims 10 and 12-14 have been amended to depend from claim 9. Because claim 9 has not been rejected over Konishi, it is submitted that claims 10 and 12-14 are allowable over Konishi for at least the same reasons as claim 9.

Claim 16, as amended, requires "a second planter positioned on the planter and suspended from an exterior surface of the planter along the upper rim." Konishi does not disclose a second planter attached to and suspended from a first planter. As a result, claim 16 does not claim the same invention as disclosed in Konishi.

Claim 22 requires "a second planter arranged with respect to the first planter including an upper portion, a lower portion and a side portion integrally formed with one another to provide a continuous planting area of various heights positioned about the first planter." Konishi does not disclose a continuous planting area of various heights. As a result, claim 22 does not claim the same invention as Konishi discloses.

## **II. Rejections Under 35 U.S.C. § 102(b)**

The Examiner has rejected claim 9 as anticipated by Cox under 35 U.S.C. § 102(b). Claim 9, as amended, requires that the planter have a “planter having a bottom portion in direct contact with [a] quantity of water” and “wherein [a] base is in direct contact with the bottom portion of the planter that is, in turn, in direct contact with the quantity of water.” Cox does not disclose a base in direct contact with a bottom portion of a planter which is, in turn, in contact with a quantity of water. As a result, Cox does not disclose the elements of claim 9. Therefore, claim 9 is allowable over Cox.

## **III. Rejections Under 35 U.S.C. § 103(a)**

The Examiner has rejected claims 5 and 11 as obvious over Konishi. Claim 5 depends from claim 1. One of ordinary skill in the art would have no motivation to modify claim 1 in accordance with the differences of claim 1 and Konishi as discussed above. As a result, claim 5 is allowable over Konishi as discussed with reference to claim 1. Claim 11, as amended, depends from claim 9, which has not been rejected over Konishi. Therefore, Applicant submits that claim 11 is allowable over Konishi for the same reasons as claim 9.

Claim 15 and 17-21 have been rejected as obvious over Konishi in view of Steffan. Claim 15, as amended, depends from claim 9, which has not been rejected over Konishi or Steffan or the combination of the two. Therefore, Applicant submits that claim 11 is allowable over Konishi for the same reasons as claim 9. Claims 17-20 depend from claim 16, which requires “a second planter positioned on the planter and suspended from an exterior surface of the planter along the upper rim.” Neither Konishi nor Steffan discloses at least this limitation. Therefore, claims 17-20 are allowable over Konishi in view of Steffan.

#### **IV. Objections and Rejections under 35 U.S.C. § 112, ¶ 1**

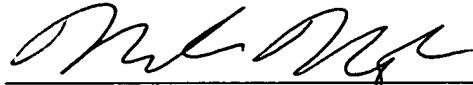
The Examiner made several objections and rejections under 35 U.S.C. § 112, ¶ 1. Applicant, with this amendment, has corrected these errors and submits that the application is in condition for allowance over these objections and rejections.

#### **V. Conclusion**

For the foregoing reasons, it is submitted that claims 1-3, 5-20 and 22 are in condition for allowance and the Examiner is requested to allow such claims to issue.

Respectfully Submitted,

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FOR: FOUNTAIN STRUCTURE

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**APPENDIX TO AMENDMENT A**  
**Version Of Claims With Markings To Show Changes Made**

**In the Specification:**

Please amend the final paragraph of page 7 (beginning at the third from the last line) to read:

--With reference now to Fig. 3, another embodiment of a fountain for a planter 50 is depicted. The fountain for a planter 50 comprises a planter 52 having a hollow interior 54 which may be filled with a quantity of water 56. In this manner, the interior 54 serves as a reservoir or a container for the water 56. The interior 54 of the planter 52 also has a water discharge device 58 for spraying water 56 out of the device 58 in order to function as a fountain within the planter 52. The planter 52 has an exterior surface 60 upon which may be attached or mounted a second planter 62. The planter 62 encircles an upper rim 64 of the planter 52 and placed therein may be flowers or plants along with soil. The exterior surface 60 further has an opening 66 through which is inserted an electrical cord 68. As has been previously described, the cord 68 is connected to a water pump which is used to recirculate or pump the water 56 through the water discharge device 58. As can be appreciated, the planter 62 may receive water 56 from the water discharge device 58, if desired. The planter 62 further includes wheels 69 attached near the bottom of the planter to allow the planter 62 to be transported without lifting it.--

**In the Claims:**

1. (Amended) A fountain comprising:

a planter having a hollow interior for storing a quantity of water;

a pump for pumping the quantity of water within the planter;

a water discharge device connected to the pump for discharging the quantity of water;

and

a second planter positioned on and suspended from an exterior surface of the planter.

9. (Amended) A fountain comprising:

a planter having a hollow interior for storing a quantity of water the planter having a bottom portion in direct contact with the quantity of water;

a pump for pumping the quantity of water within the planter;

a water discharge device connected to the pump for discharging the quantity of water;

and

a base adapted for having the planter positioned thereon, the base being wider than the planter and for receiving a portion of the quantity of water being discharged from the water discharge device wherein the base is in direct contact with the bottom portion of the planter that is, in turn, in direct contact with the quantity of water.

10. (Amended) The fountain of claim [8] 9 wherein the base is adapted for holding plants or flowers to be watered.

11. (Amended) The fountain of claim [8] 9 wherein the planter has a bottom and the pump is positioned on the bottom.

12. (Amended) The fountain of claim [8] 9 wherein the water discharge device is a fountain head.

13. (Amended) The fountain of claim [8] 9 wherein the water discharge device is a sprinkler head.

14. (Amended) The fountain of claim [8] 9 wherein the water discharge device comprises a tubular post member and a fountain head, the post member for providing water from the pump to the fountain head.

15. (Amended) The fountain of claim [8] 9 wherein the base further comprises a wheel assembly for moving the base and the planter.

16. (Amended) A fountain comprising:

a planter having an upper rim and an interior for storing a quantity of water;

a pump for pumping the quantity of water within the planter;

a water discharge device connected to the pump for discharging the quantity of water;

and

a second planter positioned on the planter and suspended from an exterior surface of the planter along the upper rim, the second planter being wider [that] than the planter, the second planter for holding flowers or plants and for receiving a portion of the quantity of water being discharged from the water discharge device to water the flowers or plants.

17. (Amended) The fountain of claim [15] 16 wherein the planter has a bottom and the pump is positioned on the bottom.

18. (Amended) The fountain of claim [15] 16 wherein the water discharge device is a fountain head.

19. (Amended) The fountain of claim [15] 16 wherein the water discharge device is a sprinkler head.

20. (Amended) The fountain of claim [15] 16 wherein the water discharge device comprises a post member connected to the pump and a fountain head, the post member for providing water from the pump to the fountain head.